IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7863 OF 2005

Mrs.Nadiya Shafiq Shaikh. ..Applicant.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Ms.Anjali Patil for applicant.

Smt.G.P.Mulekar, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 12, 2005.

P.C. :

1. Heard counsel for the parties.

2. Main grievance of the applicant before this court is that, because of non-delivery of custody of flat in question to the applicant, who is allegedly the owner thereof, she is not in a position to complete the transaction with the builders-respondent No.2 and the respondent No.3 the original owner of the flat. In my opinion, however, it is not possible to expand the scope of the present proceedings as those issues will have to be resolved by the applicant by taking recourse to appropriate remedy as may be advised.

3. It is then contended that the applicant may

be permitted to atleast complete the transaction though the relief of return of custody of flat can be considered at the end of the trial. There is nothing in the order, in my opinion, which would prohibit the applicant from completing the transaction with respondent No.2 and 3. The application for return of property cannot be used as application for seeking direction against respondent No.2 and 3, which can be issued only in appropriate proceedings, if resorted to by the applicant.

4. Counsel for the applicant submits that atleast trial pending before the court of Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai being C.C. No.678 of 2001 be expedited. The trial court may expedite the hearing of the trial, if there are no other older cases pending than the above said Criminal case before it.

5. Learned APP submits that applicant may proceed to complete the transaction at her risk. This submission will have to be accepted. In other words, applicant may proceed to complete the transaction at her own risk, without claiming equity at later stage of the proceedings.

6. With these observations, application disposed of.